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in the entire charge of Mr. Peabody ; Professor Beale will, as usual, give the latter half. Professor Wambaugh's course on Contracts and Quasi-Contracts has been divided into two half-courses. Professor Strobel's absence in Europe on account of ill-health has necessitated the discontinuance of the course on International Law and the lectures on the Civil Law of Spain and the Spanish Colonies. Dean Ames has consented to give the course on Admiralty which Professor Strobel had expected to teach. Two new lecture courses are offered : one dealing with Mining Law, to be given by Charles J. Hughes, Jr., of Denver, Colorado ; the other, by Mr. Adams, treating of the Law of Irrigation.

The enrollment in the school on October fifteenth was slightly greater than on the same date last year. Complete statistics will appear in the December number.

PRIORITY OF RAILROAD RECEIVERS' CERTIFICATES OVER EXISTING MORTGAGES. — The power of courts of equity to authorize railroad receivers to issue certificates having priority over existing mortgages is now well established. *Kneeland v. American Loan & Trust Co.*, 136 U. S. 89 ; *Bank of Commerce v. Central Coal & Coke Co.*, 115 Fed. Rep. 878 (C. C. A., Eighth Circ.) The limits of that power, however, have not yet been fixed, and there has been an alarming tendency to juggle interests and rights without due regard for the bondholders. The decision of a recent case emphasizing the need of caution in the exercise of this extraordinary right is a welcome check. Certificates were issued to complete a road only one-third built, and later a second series was issued with priority over the first, the result being sure loss to the first mortgagees and only conjectural benefit to the other creditors. The Court of Appeals, in reversing the ruling of the lower court, well said, "The appointment of a receiver vested in the court no absolute power over the property, and no general authority to displace vested contract liens." *Bibber-White Co. v. White River, etc., Co.*, 115 Fed. Rep. 786 (C. C. A., Second Circ.).

The subordination of existing mortgages and prior liens to liens for running expenses is justified under the plea of necessity rather than defended on principle. The argument is twofold. The peculiar nature of the corporate business makes it imperative that the railroad should be kept running if the property is to be preserved. Loans for this purpose can be secured only by granting priority of lien, and thus this power, though dangerous, is necessary for the ultimate protection of even the bondholders. The same reasoning shows that the stockholders and the other creditors will often have to depend on such action by the court as their only hope of relief. Again it is urged that the court in charge of the railroad must continue it in operation to enable it to fulfill its obligations to the public. It would seem that both these reasons, or at least the first, should exist in any given case before the vested rights of the mortgagees should be displaced. It is on the element of public duty, however, that the chief emphasis has been laid, and consequently the doctrine has not been applied to private corporations owing no such duty. *Baltimore, etc., v. Alderson*, 32 C. C. A. 542. On the other hand, probable loss to the mortgagees has not always been thought a fatal objection when the public welfare was concerned. *Ellis v. Vernon Ice, etc., Co.*, 4 Tex. Civ. App. 66 ; see 7 HARV. L. REV. 375. The arguments based on the interest of the public and on the probable ultimate benefit of all the

parties interested lead on to an indefinite extension of the doctrine, and the danger lies in the lack of a fixed limit. This is shown in cases where the courts have considered it their duty to complete unfinished roads. *Miltenberger v. Logansport Ry. Co.*, 106 U. S. 286. The action of the lower court in the principal case is the most extreme instance of this danger. It is conceded that the bondholders have a right to be notified so that they may appear and argue against the issue of the certificates. But that precaution helps little if the test is to be not their interest but that of the public. It is claimed that in extending credit to the railroad they have taken the risk of the issue of certificates with the consequent postponement of their liens. But it is unjust to force them to take the chance of arbitrary action. The question before the court in each case should be not a balancing of benefits to see whether the gains will be greater than the losses to all concerned treating all on an equal footing, but whether the probable protection of the bondholders and the benefit to the other interested parties and to the public require and justify interference with vested rights otherwise sacred.

DISTRIBUTION BETWEEN LIFE-TENANT AND REMAINDERMAN. — A difficult question as to distribution arises, if, when shares of a corporation are held in trust for a life-tenant and remainderman, the corporation instead of declaring dividends lays its earnings by in the form of a surplus. In a recent Mississippi case, bank shares were sold by a trustee at a price enhanced by the existence of a large surplus accumulated from profits earned subsequently to the creation of the trust. The court gave the life-tenant the increase in price due to such surplus. *Simpson v. Millsaps*, 31 So. Rep. 912.

In the cases hitherto decided the fund for distribution had generally been received by the trustee in the form of a cash bonus or a stock dividend; but an adoption of any of the theories advanced in those cases will settle the question, no matter in what form the fund may have come to the trustee. There may be said to be three views as to distribution. (1) The so-called "Massachusetts" view treats cash dividends as "income," regardless of when the earnings were made, provided the declaration of the dividend comes during the life tenancy; stock dividends it regards as "corpus" to which the remainderman is consequently entitled. *Minot v. Paine*, 99 Mass. 101; *In re Barton's Trust*, L. R. 5 Eq. 238; *Gibbons v. Mahon*, 136 U. S. 549. An exception to the first part of this rule is made when it appears that the cash dividend resulted from other sources than actual earnings; such a dividend goes to the remainderman. *Heard v. Eldrige*, 109 Mass. 258. (2) The New York and Kentucky view gives to the life-tenant all dividends, whether stock or cash, issuing from earnings, whenever such earnings may have accrued, provided the declaration is made during his term. *Riggs v. Cragg*, 26 Hun (N. Y.) 89. See also *Hite v. Hite*, 93 Ky. 257. (3) The Pennsylvania rule considers earnings made during the tenant's term, and only those, as "income," the form and time of the declaration of the dividend being of no consequence. *Earp's Appeal*, 28 Pa. St. 368; *Van Norden v. Alden*, 19 N. J. Eq. 176. Before attempting to select from these various views it should be noted that since the problem arises out of the words used in a trust instrument, it is primarily one of construction. No hard and fast rule can be laid down that under all circumstances "corpus" or "income" shall have the same meaning. In